

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 248

**THE ILLINOIS CENTRAL RAILROAD COMPANY,
APPELLANT,**

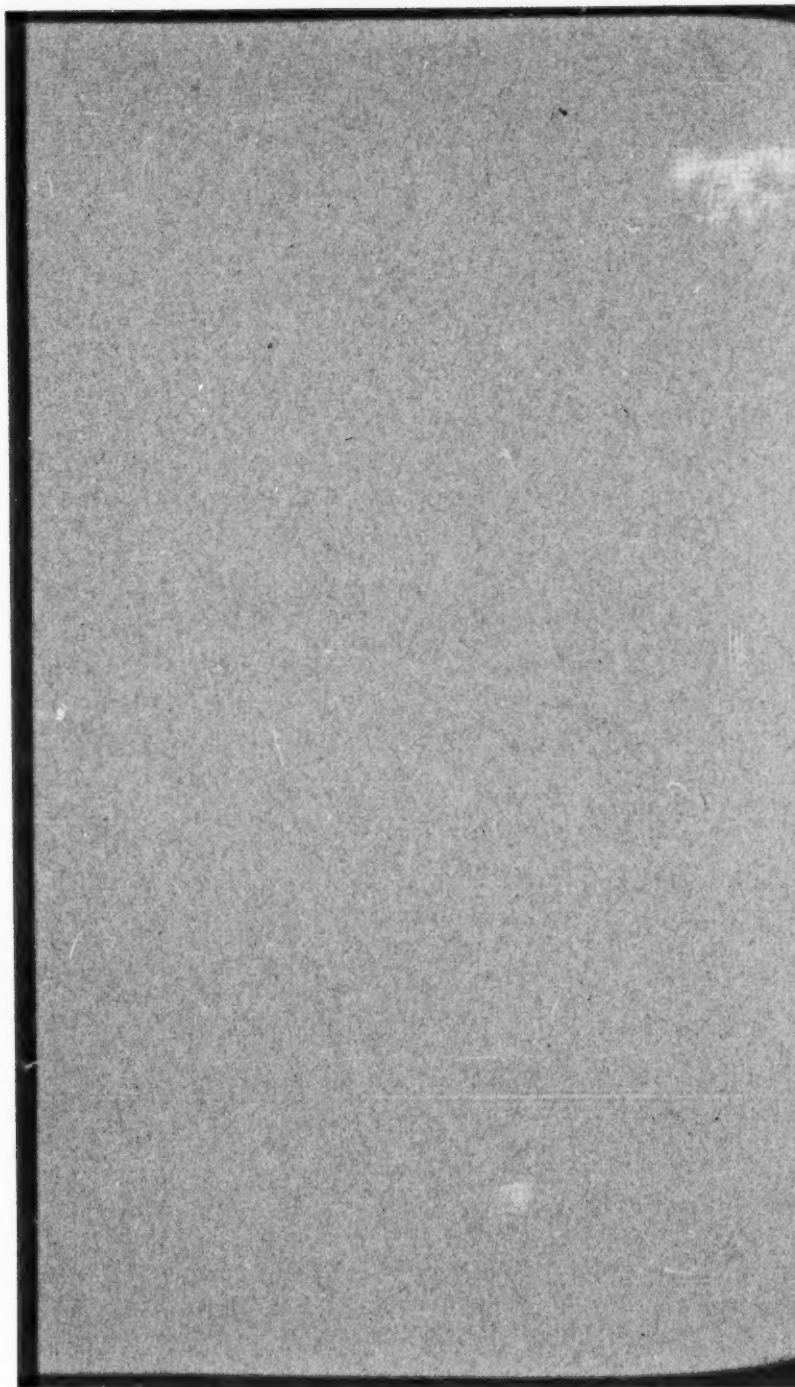
vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED MARCH 19, 1923

(29,461)



(29,461)

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APPELLANT,

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APPEAL FROM THE COURT OF CLAIMS

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[fol. 1]

COURT OF CLAIMS

No. 33955

THE ILLINOIS CENTRAL RAILROAD COMPANY

vs.

THE UNITED STATES

I. PETITION AND AMENDED PETITION

On March 23, 1918, the plaintiff filed its original petition.

Subsequently, to wit, on November 12, 1921, by leave of court, the plaintiff filed its amended petition. Said amended petition is as follows:

II. AMENDED PETITION—Filed Nov. 12, 1921

Petitioner by leave of court this, its amended petition, and says:

I

Petitioner is a corporation organized under the laws of the State of Illinois. At the times of the occurrences hereinafter stated it operated a system of railways in the States of Illinois, Indiana, Iowa, Nebraska, Kentucky, Tennessee, Mississippi and Louisiana.

II

Three of petitioner's railway lines, extending respectively (1) from Chicago to Cairo, both in the State of Illinois, (2) from Centralia to East Dubuque, both in Illinois, and (3) from Dubuque to Sioux City, both in the State of Iowa, were constructed with aid of public lands granted by Congress (acts approved September 20, 1850, May 15, 1856, June 2, 1864, and March 2, 1868). Each of the grants so received contained the following provision:

"Said railroad and branches shall be and remain a public highway, for the use of the Government of the United States, free from toll or other charges upon the transportation of any property or troops of the United States." (9 Stats. L. p. 63.)

III

[fol. 2] By legislation of Congress and judicial proceedings all antecedent to the matters hereinafter narrated, it was fixed that for transportation of property of the United States on railroads constructed with the aid of such land-grants there should be paid fifty (50) per cent of the ordinary rates established for transportation of the property of private owners; and by agreements between the

United States and the railroad companies operating such land-aided lines, which were in effect at the times hereinafter narrated, the lowest rate that would be afforded upon any line through such a grant was made applicable to all other and competing lines between the same terminal points.

IV

In the years 1909 to 1916 inclusive there occurred frequently upon said land-aided railways operated by petitioner shipments of property belonging to private owners, consigned to officers of agents of the United States. In such shipments there were used bills of lading, made up by the consignors, which were on forms that had been prepared by officers of the United States and for its use, and therefore were known in railway offices as "Government bills of lading;" which forms had been furnished to the consignors by the officer of the United States having authority over transportation of its property. Details of said shipments, and of payments made to claimants therefor, are set out in bills of particulars filed herewith.

V

In some cases the commodities or articles so transported were for use, as materials or supplies, in authorized public improvements constructed by the United States and in other cases the matter transported was coal for uses of the United States army. Offers had been invited and had been accepted by authorized officers of the United States. In invitations bidders were directed to submit prices both for delivery both on cars at points of shipment and at final destinations, and the explanation was given that it was desired, by the apparent acceptance of delivery at points of shipment, to obtain for the Government the benefit of land-grant freight rates. The bids so obtained and accepted named, for delivery at points of shipment, prices less by the amounts of the ordinary freight charges than the rates named for delivery at destinations. In the contracts which followed the offer for delivery at point of shipment were accepted, and it was provided (1) that the freight charges and all other obligations, and all risks in the shipments should be borne, and the unloading and handling at destinations done, by the contractors; (2) that the materials should not be accepted and paid for until they had been inspected at final destinations and accepted by officers of agents of the United States and (3) that such materials as, upon such inspection, should be rejected would be removed from the site of the work, or of the inspection by, or at the expense of, the contractors. These provisions were observed in the dealings of the officers of the United States with the contractors for, and payment for the transportation was made to claimant at land-grant rates; and thus the United States profited to the extent of the difference between those rates and the ordinary tariff rates which would necessarily have been paid if the materials had been transported as property of the contractors.

The amount of said abatements made from petitioner's compensation [fol. 4] is forty thousand dollars (\$40,000.00).

VI

The freight charges for said shipments were paid to claimant by disbursing officers of the United States. In receiving and transporting said freights and when receiving said payments petitioner's officers believed that the freights belonged to the United States.

Petitioner prays judgment against the United States in said sum of forty thousand dollars (\$40,000.00); no part of the same having been paid and its claim to the same not having been assigned wholly or in part.

The Illinois Central Railroad Company, By Benj. Carter, Its Attorney in Fact.

DISTRICT OF COLUMBIA, ss:

Before me, Chas. H. Ruoff, a notary public in and for said District, appeared Benj. Carter, subscriber to the foregoing petition, who being by me sworn, makes oath and says that the allegations of said petition are true to the best of his knowledge, information and belief.

Benj. Carter.

Subscribed and sworn to before me on this 22d day of September, 1921.

Chas. H. Ruoff, Notary Public.

[fol. 5]

IN THE COURT OF CLAIMS

III. GENERAL TRAVERSE

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

IN THE COURT OF CLAIMS

IV. ARGUMENT AND SUBMISSION OF CASE

On March 20, 1922, this case was submitted on merits by Mr. Benjamin Carter, for the plaintiff, and Mr. Perry W. Howard, for the defendant, on the arguments, made this day, in the case of Louisville and Nashville Railroad Company vs. United States, No. 3239.

V. FINDINGS OF FACT, CONCLUSION OF LAW, MEMORANDUM BY THE COURT, AND APPENDICES A, B, C, AND D—Entered May 1, 1922.

This case having been heard by the Court of Claims, the Court, upon the evidence, makes the following

FINDINGS OF FACT

I.

The plaintiff is, and was during the different transactions hereinafter described, a corporation duly incorporated under the laws of the State of Illinois, engaged in the operation of a system of railways in the States of Illinois, Indiana, Iowa, Nebraska, Kentucky, Tennessee, Mississippi, and Louisiana.

II

Three of plaintiff's lines of railway, (1) from Chicago to Cairo, (2) from Centralia to East Dubuque, all in the State of Illinois, and (3) from Dubuque to Sioux City, both in the State of Iowa, were constructed with the aid of public lands granted by Congress (acts of September 20, 1850, 9 Stat. 466; May 15, 1856, 11 Stat. 9; June 2, 1864, 13 Stat. 95, 98; March 2, 1868, 15 Stat. 38).

III

In the year 1914 a contract was entered into between Major G. M. Hoffman, of the Corps of Engineers, and the Chicago & Carterville Coal Company to furnish coal for river improvements in the vicinity of Dubuque, Iowa, and the coal was shipped during that year from Herrin to Dubuque. During the same year a contract was made by Major Hoffman with the Collieries Sales Company, under which shipments of coal for the same purpose were made during that year from Eldorado to Dubuque, and in 1915 and 1916 Major Hoffman made two contracts, one in each year, with Rutledge & Taylor Coal Company for coal for the same purpose which was shipped during 1915 and 1916 from Duquoin to Dubuque.

[fol. 7] None of the above contracts has been introduced in evidence. Certain extracts from the specifications and proposals to furnish coal and acceptances thereof found in the record are attached to these findings as Appendix A, and are made part thereof by reference thereto.

IV

The coal was delivered under the four contracts described above on board cars at the different mines, and was shipped over plaintiff's lines therefrom to Dubuque on Government bills of lading furnished

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to said coal companies by the Government, which were duly accomplished, the coal inspected and accepted at that place by the proper Government officials. The total land-grant deductions on such shipments made by the plaintiff in stating its bills amounted to \$5,234.61.

V

During the years 1911, 1912, 1913, and 1915 numerous shipments of materials and supplies, such as coal, stone, lumber, hardware, and other articles for use in Government improvements of the Missouri River, were made over plaintiff's lines from Athens, Marissa, Winkle, Freeburg, Belleville, New National Mine, Mulberry Hill, Lenzburg, Herrin, Chicago, and Chicago Heights, in the State of Illinois; East Sioux Falls and Rowena, in the State of South Dakota; St. Louis, Missouri; Hattiesburg, Mississippi; and Houlton Junction, Louisiana, to Sioux City, the Narrows, and River Siding, Iowa, and Omaha, Nebraska. These materials and supplies were all purchased on invitation to bidders, proposals of bidders, and vouchers, on which payments were made to the sellers. The form of invitation on which bids were made invariably read: "The prices will be for the articles delivered f. o. b. cars at ——. The successful bidder will procure the cars, but the United States will pay the freight and furnish shipping instructions and bills of lading. This arrangement is made to enable the Government to take advantage of land-grant rates, and will not operate to relieve the dealer of any responsibilities as shipper that would attach if the delivery had been at destination." This form of invitation was only used over land-grant or bond-aided roads, and was never used where delivery was to be made at point of use.

The shipments were all made on Government bills of lading, which were accomplished, the articles inspected, and accepted at points of use by the proper Government officials. The total land-grant deductions on such shipments made by the plaintiff in stating its bills amounted to \$9,695.27.

The Government official, examined as to the purchase of the above articles, produced the form of invitation quoted—one bid and one voucher, upon which payment was made. The bids and voucher were not introduced in evidence. All the rest of the invitations, bids, and vouchers were destroyed, according to the practice of the office, after three years.

VI

Land-grant deductions on some of the shipments described in Finding V were made from October 30, 1911, to March 7, 1912, both fol. 81 dates inclusive, amounting to \$2,511.68, and were all made more than six years prior to the filing of this suit on March 23, 1918.

VII

On June 3, 1914, the Government, through Lieut. Col. Judson, Corps of Engineers, entered into a contract with the Lumber Manu-

facturers' Agency of Centralia, Lewis County, Washington, for 888,720 feet b. m., more or less, Oregon or Washington fir timber, for breakwater repairs in the Chicago, Illinois, district, to be delivered on board cars at the company's mills, and to be inspected, both at the mills and the point of delivery, before acceptance and payment.

On August 5, 1914, the Government, through Major Cavanaugh, Corps of Engineers, entered into a contract with the Union Lumber Company, of Union Mills, Thurston County, Washington, for 2,793,180 feet b. m., more or less, for timber to be delivered on board cars at the company's mills, the timber to be used for constructing part of the exterior breakwater at Chicago, Illinois.

Inspections were to be made at the company's mills and final inspection at point of delivery before acceptance and payment. The deliveries were made as required by the two contracts, and timber was all inspected at the mills and afterwards at Chicago, and was accepted and paid for in accordance with certificates of the Engineer officer in charge of the work.

The shipments were made from Winlock, Walville, Napavine, Vader, Pe Ell, Bordeaux, Chehalie, Centralia, Hartford, Rainer, Littell, and Union Mills, State of Washington, to East Chicago, Illinois, and were partly over plaintiff's lines, and were made on Government bills of lading. The total land-grant deductions for shipments over plaintiff's lines made by the plaintiff in stating its bills amounted to \$9,340.18.

The contracts are attached to these findings as Appendix B, and are made part hereof by reference thereto.

VIII

On August 15, 1916, the Government advertised for sealed proposals to furnish and deliver cement for use on revetment work on the Mississippi River at Vicksburg, Mississippi. The specifications furnished to prospective bidders stated that proposals would be considered for delivery f. o. b. cars at point of manufacture, and f. o. b. cars on the Government warehouse switch at Vicksburg, Mississippi. The Carolina Portland Cement Company of New Orleans, on August 26, 1906, proposed to furnish 10,000 barrels at \$1.44½ per barrel, f. o. b. cars point of manufacture, Leeds, Alabama, or f. o. b. cars at Vicksburg, at \$1.90 per barrel. The proposal was accepted at \$1.44½ per barrel, f. o. b. cars, Leeds, Ala. The cement was shipped in 1916 over plaintiff's lines to Vicksburg on Government bills of lading, which were accomplished, and the cement tested and accepted by the proper Government officials. The total land-grant deductions on such shipments made by the plaintiff in stating its bills amounted to \$251.24.

The advertisement, proposal, and acceptance are attached to these findings as Appendix C and are made part hereof by reference hereto.

[fol. 9]

IX

On August 7, 1915, Major Markham, of the Corps of Engineers in charge of certain Government work on the Mississippi River, with headquarters at Memphis, Tennessee, wrote to the Bucyrus Company of South Milwaukee, Wisconsin, inviting a proposal to furnish and install a concrete mat revetment plant. On September 8, 1915, the said company proposed to deliver the plant at South Milwaukee in fourteen weeks from date of order for \$9,500.00, or to deliver same at South Milwaukee in ten weeks from date of order for \$9,775.00, and to put up and install said plant at Memphis, and furnish an operator for two weeks, for \$1,175.00 additional. On September 13, 1915, the proposal of said company was accepted for delivery at South Milwaukee in ten weeks, with certain changes of price and construction which appear to have been accepted. The plant was shipped over plaintiff's lines to Memphis on two Government bills of lading, which were duly accomplished, the plant erected, and after proper tests, paid for by the Government. The land-grant deduction made by the plaintiff in stating its bills amounted to \$81.74.

The proposal (citing the invitation to bid), the acceptance, and the voucher showing payment are attached to the findings as Appendix D, and made part hereof.

X

On June 5, 1914, Richard E. Egglebrecht, of St. Louis, Missouri, entered into a contract with the United States, through Capt. F. G. Stritzinger, of the Quartermaster Corps, to furnish and deliver by June 30, 1915, free on board cars at Carterville, Illinois, 13,500 tons of coal, to be paid for after delivery, at Omaha, at the rate of \$1.56 per long ton.

On June 1, 1916, the Nebraska Fuel Company entered into a contract with the Government, through Col. G. S. Bingham, of the Quartermaster Corps, to deliver free on board cars at Duquoin, Illinois, coal in such quantities and at such times as might be required by the receiving officer or agent of the Quartermaster Corps. Payment to be made at Omaha, Nebraska, at the rate of \$1.739 per short ton, which included the cost of unloading and storing in bins.

The coal furnished under said contracts were shipped from Carterville and Duquoin over plaintiff's lines to Omaha, Nebraska, on Government bills of lading, which were duly accomplished, and the coal inspected and accepted at that place by the proper Government officials. On said shipments land-grant deductions of \$159.29 were made by the plaintiff in stating its bills.

The two contracts and material parts of the specifications are attached to these findings as Appendix E, and are made part hereof by reference thereto.

XI

The plaintiff's bills were presented to the Government for payment of the net freight for the transportation of said coal and other

articles after the proper land-grant deductions had been made by the plaintiff in stating its bills and payment was made to the plaintiff of the full amount claimed on that basis and accepted without protest.

[fol. 10]

XII

It is not shown whether the plaintiff, when said freights were received and transported and when its bills were rendered and payment received, was or was not informed of the conditions of the contracts or orders with reference to inspection and acceptance or rejection at point of destination or when, if thereafter, it was so informed.

XIII

The Government form of bills of lading used in the transportation of the articles in question provided on its face for the hauling of Government property only, and the directions on the back of the same limited their use to Government property. The agreement on the back of the same between the United States and the carrier stipulated that prepayment of charges should in no case be demanded by the carrier, nor should collection be made from the consignee; that on presentation to the office indicated on the face of the bill of lading properly accomplished, attached to freight voucher prepared on authorized Government form, payment would be made to the last carrier unless otherwise specifically stipulated; that the shipment was to be made at the restricted or limited valuation specified in the tariff or classification at or under which the lowest rate would be available unless otherwise indicated on the face of the bill of lading.

CONCLUSION OF LAW

Upon the facts found the court concludes as matter of law that the plaintiff is not entitled to recover and that its petition ought to be and it is dismissed with judgment against the plaintiff for cost of printing the record to be taxed by the clerk.

[fol. 11]

IN THE COURT OF CLAIMS

MEMORANDUM

All the transportation here involved was of supplies purchased under contracts or orders providing for delivery f. o. b. cars at mine or factory. That the United States and its contractors, having seen fit to so contract, also saw fit to provide for a final inspection at place of delivery, with incidental right of rejection, or for some further service to be rendered by the contractor at that point, either for the original or an additional compensation, are matters of no concern to the railroad company unless they are entitled to assert that, be-

cause thereof the shipments were not shipments of "Government property" and hence not entitled to land-grant rates. Such a contention is not tenable. The United States and the contractors were privileged to write into their contract such terms as they saw fit and a third party, even though incidentally interested as a carrier, may not give an effect to one provision other than that plainly intended by the parties because the parties themselves saw fit to agree to other terms regarded by it as inconsistent therewith. Provisions for a final inspection at point of delivery or for the rendering of a further service by the contractor at that point were not inconsistent with and could not be invoked to nullify a specific provision under which the title to the property passed to the United States by delivery at the initial point of shipment to the carrier as agent. Land-grant rates were applicable.

In rendering its bills the plaintiff itself made land-grant deductions from commercial rates, claimed only the land-grant rate resultant from such deductions, and accepted payment thereof without protest. It is thus estopped to assert a further claim for the same service except upon a showing of fraud or mistake of fact. There is no proof that the plaintiff was in any way deceived or mistaken as to the facts or was not fully informed with reference thereto when it rendered the service, presented its bills, and received payment thereof. *B. & O. Case, 52 C. Cls. 468; Oregon-Wash. Case, 54 C. Cls. 131, affirmed 255 U. S. 339.*

Part of the claim presented, amounting to \$2,511.68, relating to shipments from October 30, 1911, to March 7, 1912, was barred by the statute of limitations when this suit was commenced, March, 23, 1918.

[fol. 12]

APPENDIX A TO FINDINGS

U. S. Engineer Office,
Rock Island, Ill., March 3, 1914.

IV. Reservations

* * * * *

V. Description of Coal Desired

* * * * *

VII. Delivery

13. The successful bidder or bidders will be required to deliver all the coal covered by this proposal f. o. b. cars at mines on or before March 31, 1914.

VIII. Sampling—Analysis

14. If desired by the successful bidder, permission will be given to him or his representative to be present and witness the collection and preparation of the samples to be forwarded to the Government laboratory.

15. The coal will be sampled at the time it is being loaded or unloaded from railroad cars, barges, or wagons, or as soon thereafter as possible. The samples taken will in no case be less than the total of one hundred (100) pounds per carload, to be selected proportionately from the lumps and fine coal and from different parts of each carload contained in each delivery, in such a manner as will in every respect truly represent the quality of coal delivered.

* * * * *

IX. Causes for Rejection

* * * * *

X. Price and Payment

20. Payment will be made promptly upon receipt of a report from the laboratory on the quality of the coal under consideration. The laboratory will furnish such report in not more than fifteen (15) days after receipt of the last sample or samples.

* * * * *

(m) Total quantity to be delivered under this proposed 7,000 tons (more or less). Price per ton of 2,000 pounds (this price is understood to be the bid price per ton, see paragraph 20 for method of determining price for delivered coal): \$1.35 mines, 7,000; \$9,450 total.

[fol. 13] Note.—Bids will be considered on less than the quantity specified (7,000 tons), and bidders who desired to submit prices on a less quantity should state hereon the quantity they propose to furnish at the price quoted.

To Major G. M. Hoffman,
Corps of Engineers, U. S. Army:

The undersigned hereby propose to furnish the coal as above specified, and at the price stated above, subject to all the conditions of the specifications and proposal, and deliver same f. o. b. cars at the originating point or points above designated on or before March 31, 1914.

The undersigned has read the specifications and proposal and agrees to comply therewith in every particular.

Signature: Chicago & Carterville Coal Co. W. H. Hill, Vice
Pres. (E. S. A.)

Place of business: 640 Old Colony Building, Chicago, Ill.

U. S. Engineer Office,
Rock Island, Ill., March 10, 1914.

Chicago & Carterville Coal Co.
Old Colony Building, Chicago, Illinois.

GENTLEMENS

Your proposal, opened at 11 a. m., March 9th, for furnishing 7,000 tons, more or less, bituminous lump coal, f. o. b. mines, on or before March 31st, appears to be the most advantageous of any of the bids received, and is, therefore, accepted.

I am unable to place any immediate orders, owing to the fact that the ice has not yet gone out of the river at certain points of delivery, but you will be notified at the earliest possible moment when and how to commence shipping.

Very respectfully, G. M. Hoffman, Major, Corps of Engineers.

U. S. Engineer Office,
Rock Island, Ill., Oct. 6, 1914.

I. Proposals

1. Sealed proposals to furnish the quantity of coal specified in the schedule herewith, required for the use of U. S. forces engaged on river improvement work between mouth of Missouri River and St. Paul, Minn., etc., will be received until 11 o'clock a. m., October 2, 1914, at the office of Major G. M. Hoffman, Corps of Engineers, U. S. A., Federal Building, Rock Island, Ill., and then opened.

* * * * *

(m) Total quantity to be delivered under this proposal, 2,000 tons (more or less). Price per ton of 2,000 pounds (this price is understood to be the bid price per ton, see paragraph 20 for method of determining price for delivered coal), \$1.38 f. o. b. mine; \$2,760, total.

[fol. 14] To Major G. M. Hoffman
Corps of Engineers, U. S. Army.

The undersigned hereby propose to furnish the coal as above specified, and at the price stated above, subject to all the conditions of the specifications and proposal, and deliver same f. o. b. cars at the originating point or points above designated as specified in Section VII, paragraph 13, hereof.

The undersigned has read the specifications and proposal and agrees to comply therewith in every particular.

Signature: Collieries Sales Co., Per J. D. Miller, V. Pres.

Place of business: 501 Best Building, Rock Island, Ill.

U. S. Engineer Office.
Rock Island, Ill., Oct. 9, 1914.

Collieries Sales Co.,
Rock Island, Ill.

Gentlemen:

1. Your proposal for furnishing approximately 2,000 tons 6" lump coal f. o. b. mines, Eldorado, Saline County, Ill., at \$1.38 per ton, subject to correction for B. t. u. and ash, is accepted.

2. Inclosed herewith are Government bills of lading Nos. 17602 to 17626, inclusive, 25 in all, upon which the coal shipped by you under this agreement must be billed. Additional Government bills of lading will be issued to you as needed.

3. Commence shipment immediately as follows:

(a) Rock Island, Ill. Consignee, J. C. McElherne, U. S. asst. engineer. Routing, Ill. Central via La Salle to C. R. I. & P. Ship two fifty (50) ton cars per day until approximately 700 tons have been shipped.

(b) Moline, Ill. Consignee, J. B. Basset, U. S. asst. engineer. Routing, Ill. Central via Mendota to C., B. & Q. Ship two 50-ton cars per week until approximately 550 tons have been shipped.

4. Additional instructions concerning shipments to other points will be given you later.

Very respectfully, G. M. Hoffman, Major, Corps of Engineers.
W. T. Chambers, Purchasing Agent. WTC—JHG.

U. S. Engineer Office,
Rock Island, Ill., March 27, 1915.

I. Proposals

1. Sealed proposals to furnish the quantity of coal specified in the schedule herewith, required for the use of U. S. forces engaged on river improvement work between mouth of Missouri River and St. Paul, Minn., etc., will be received until 11 a. m. April 6, 1915, at the office of Major G. M. Hoffman, Corps of Engineers, U. S. Army, Federal Building, Rock Island, Ill., and then opened.
[fol. 15] 2. Each bidder shall have the right to be present either in person or by attorney when the bids are opened.

* * * * *

VII. Delivery, etc.

13. (a) The successful bidder or bidders will be required to deliver all the coal covered by this proposal f. o. b. cars at mines in quantities as required (one or more carloads to each delivery), between April 7 and Nov. 15, 1915.

(b) The coal covered by this proposal will be shipped on Government bills of lading, to be furnished by the United States to the

successful bidder, who will be required to issue same in the manner required by U. S. regulations.

(c) Certain quantities of the coal covered by this proposal (not to exceed one-fourth the total quantity) will be required to be shipped in regulation side dumping cars. Bidders are requested to state how much advance notice they will require to procure the proper cars for these shipments.

* * * * *

(m) Total quantity to be delivered under this proposal, 40,000 tons (more or less). Price per ton of 2,000 pounds (this price is understood to be the bid price per ton—see paragraph 20 for method of determining price for delivered coal), \$1.15 per net ton of 2,000 lbs. f. o. b. mine in cars; \$46,000, total.

We propose to furnish screened lump coal over 3" round-hole mesh, quantity 40,000 tons, more or less.

We can furnish side-dump equipment, Illinois Central cars, series 118,001 to 125,500 (7,493 of these in service), on $\frac{1}{4}$ of the total quantity within 24 hours after notification is received by us.

To Major G. M. Hoffman,
Corps of Engineers, U. S. Army:

The undersigned hereby propose to furnish the coal as above specified, and at the prices stated above, subject to all the conditions of the specifications and proposals, and deliver same f. o. b. cars at the originating point or points above designated in quantities as may be required between April 7 and Nov. 15, 1915.

The undersigned has read the specifications and proposal and agrees to comply therewith in every particular.

Signature: Rutledge & Taylor Coal Co. J. E. Rutledge,
President.

Place of business: #922 Security Bldg., St. Louis, Mo.

* * * * *

U. S. Engineer Office,
Rock Island, Ill., April 9, 1915.

Rutledge & Taylor Coal Co.,
St. Louis, Mo.

Gentlemen:

1. Your proposal is accepted for furnishing 40,000 tons (more or less) 2" screened lump coal, from the Security mine, 2 $\frac{1}{2}$ miles south of Duquoin, Perry County, Ill., shipping point Duquoin, Ill., on Illinois Central R. R., price f. o. b. cars at said shipping point, \$1.15 per ton of 2,000 pounds.

[fol. 16] 2. The coal covered by your proposal and this acceptance is guaranteed by you to be of the following standard:

British thermal units per pound of "dry coal".....	13,075
Percentage of ash in "dry coal".....	9
Percentage of sulphur in "dry coal".....	1.69
Percentage of volatile matter in "dry coal".....	33
Moisture in coal "as received," per cent.....	7.5

And payment for same will be based on this standard, subject to analysis at U. S. Laboratory, Milan, Ill., from samples taken at destination points, as prescribed in section 10, paragraphs 20 and 21 of the specifications which form a part of your proposal.

3. All shipments under this agreement will be made on Government bills of lading, a supply of which with instructions for their issue are mailed to-day under separate cover.

Very respectfully, G. M. Hoffman, Major, Corps of Engineers.

U. S. Engineer Office,
Rock Island, Ill., June 15, 1916.

I. Proposals

1. Sealed proposals to furnish the quantity of coal specified in the schedule herewith, required for the use of U. S. forces engaged on river improvement work between mouth of Missouri River and St. Paul, Minn., etc., will be received until 11 a. m. June 30, 1916, at the office of Major G. M. Hoffman, Corps of Engineers, U. S. Army, Federal Building, Rock Island, Ill., and then opened.

2. Each bidder shall have the right to be present either in person or by attorney when the bids are opened.

* * * * *

VII. Delivery, etc.

15. (a) The successful bidder or bidders will be required to deliver all the coal covered by this proposal f. o. b. cars at mines in quantities as required (one or more carloads to each delivery), between July 1 and Dec. 31, 1916. Bidders are informed that 21,000 tons (more or less), of the coal covered by this contract will be ordered from the mines for shipment on or before Nov. 1, 1916; the remaining quantity of approximately 1,000 tons to be delivered as needed between Nov. 1 and Dec. 31, 1916.

(b) The coal covered by this proposal will be shipped on Government bills of lading, to be furnished by the United States to the successful bidder, who will be required to issue same in the manner prescribed by U. S. regulations.

* * * * *

(m) Total quantity to be delivered under this proposal, 1,500 tons (more or less), bituminous screenings. Price per ton of 2,000 pounds (this price is understood to be the bid price per ton, see paragraph 23 for method of determining price for delivered coal), \$0.75; \$1,125.00 total.

[fol. 17] To Major G. M. Hoffman,
Corps of Engineers, U. S. Army:

The undersigned hereby propose to furnish the coal as above specified, and at the prices stated above, subject to all the conditions of the specifications and proposal, and deliver same f. o. b. cars at the originating point or points above designated in quantities as may be required between July 1 and Dec. 31, 1916.

The undersigned has read the specifications and proposal and agrees to comply therewith in every particular.

Signature: Rutledge & Taylor Coal Company, By F. W. J.
Sextro, O. P.

Place of business: 923 Security Building, St. Louis, Missouri.

* * * * *

XIV. Delivery, etc.

28. (a) The contractor will be required to deliver the coal to the approximate localities and in the approximate quantities between July 15 and Nov. 15, 1916, as set forth in the following table:

Approximate localities	Average miles from St. Louis	Approximate quantities	
		Tons per month	Tons (total)
Alton, Illinois, to Hannibal, Mo.....	110	800	3,200
Quincy, Illinois, to Keokuk, Iowa.....	170	700	2,800
Keithsburg, Ill., to Rock Island, Ill.....	285	700	2,800
Moline, Illinois, to Le Claire, Iowa.....	321	1,200	14,800
Dubuque, Iowa, to Wyalusing, Wis.....	436	650	2,600
Genoa, Wisconsin, to La Crosse, Wis.....	525	450	1,800
Winona, Minn., to Fountain City, Wis.....	570	400	1,600
Prescott, Wis., to St. Paul, Minn.....	661	600	2,400
Total.....	...	5,500	22,000

* * * * *

U. S. Engineer Office,
Rock Island, Ill., July 8, 1916.

Rutledge & Taylor Coal Co.,
St. Louis, Mo.

Gentlemen:

1. Your proposal is accepted for furnishing 20,500 tons (more or less) 3" x 6" screened egg bituminous coal at \$1.24 per ton and 1,500 tons 1¼" bituminous coal screenings at 75c per ton, both

¹50 tons screenings.
²1,050 tons screenings.

prices being f. o. b. your Security mine $2\frac{1}{2}$ miles south of Duquoin, Perry County, Ill., shipping point Duquoin, Ill., on main line of Illinois Central Railway.

2. The coal covered by your proposal and this acceptance is guaranteed by you to be of the following standards:

3" x 6" Screened Egg Bituminous Coal

British thermal units per pound of "dry coal".....	13,075
Percentage of ash in "dry coal".....	9%
Percentage of sulphur in "dry coal".....	1.69%
Percentage of volatile matter in "dry coal".....	33%
Moisture in coal "as received," per cent.....	7.5%

[fol. 18]

1 $\frac{1}{4}$ " Bituminous Coal Screenings

British thermal units per pound of "dry coal".....	12,500
Percentage of ash in "dry coal".....	10%
Percentage of sulphur in "dry coal".....	1.70%
Percentage of volatile matter in "dry coal".....	35.00%
Moisture in coal "as received," per cent.....	9.30%

And payment for same will be based on these standards, subject to analyses at U. S. Testing Laboratory, Milan, Ill., from samples taken at destination points, as prescribed in Section X, paragraphs 22 and 23, which form a part of your proposal.

3. All shipments under this agreement will be made on Government bills of lading, which you will issue as instructed in previous agreements. Please notify this office promptly before your present supply of Government bills of lading are exhausted, so that additional ones may be sent you as needed.

Very respectfully, G. M. Hoffman, Major, Corps of Engineers.

APPENDIX B TO FINDINGS

[Form 19]

These articles of agreement entered into this third day of June, nineteen hundred fourteen, between W. V. Judson, lieut. col., Corps of Engineers, United States Army, hereinafter designated as the contracting officer, representing the United States of America, of the first part, and Lumber Manufacturers' Agency, Centralia, in the county of Lewis, State of Washington, hereinafter designated as the contractor, of the second part, witnesseth that the said parties do hereby covenant and agree to and with each other as follows:

Article 1. In conformity with the advertisement and specifications hereunto attached, which form a part of this contract, the said contractor shall furnish f. o. b. cars at mills eight hundred eighty-eight

thousand seven hundred and twenty (888,720) feet b. m., more or less, Oregon or Washington fir timber for breakwater repairs in the Chicago, Illinois, district.

The contracting officer shall pay the contractor for timber delivered, inspected, and accepted, as provided for by the specifications, at the rate of eight dollars and forty-five cents (\$8.45) per M, ft. b. m.

Article 2. All materials furnished and work done under this contract shall be subject to a rigid inspection by an inspector appointed on the part of the United States, and such as — not conform to the specifications of this contract shall be rejected. The decision of the contracting officer as to quality and quantity shall be final.

Article 9. Until final inspection and acceptance of and payment for all of the material and work herein provided for, no prior inspection, payment, or act is to be construed as a waiver of the right of the [fol. 19] contracting officer to reject any defective work or material or to require the fulfillment of any of the terms of the contract.

W. V. Judson, Lieut. Col., Corps of Engineers, U. S. A.
Lumber Manufacturers' Agency, By J. D. Wonderly, Asst.
Manager. [Seal.] Witness: S. F. Pegues. Witness: G.
F. Lewis.

[Advertisement]

United States Engineer Office,
508 Federal Building,
Chicago, Ill., March 30, 1914.

Sealed proposals for furnishing fir timber for use in Chicago (Ill.) district f. o. b. cars at mills will be received at this office until 10 o'clock a. m. April 28, 1914, and then publicly opened. Information on application to this office or to United States Engineer Office, Seattle, Wash.

H. B. Ferguson, Major, Engineers.

25. Inspection.—One or more inspectors, whose services will be paid for by the United States, will be appointed by the contracting officer. Ample provision will be made for inspection at points convenient for the contractor, who shall give reasonable notice to the contracting officer or his authorized agent as to when and where inspection will be needed. The inspector shall have power to reject any materials that do not fully conform to these specifications. The contractor shall furnish, without expense to the United States, and whenever so requested by the inspector, all necessary assistance and facilities to enable him to make a complete and thorough inspection of all timber before same is loaded on cars. The inspector will be instructed as to the order of manufacture and loading, and the contractor will be required to manufacture the timber and load the cars in accordance with orders that may be given him by the inspector, and shall properly secure timber so that it may be safely trans-

ported. The necessary materials and labor for properly securing the timber shall be furnished by the contractor without additional expense to the United States, and any materials so used shall become and remain the property of the United States.

[Form 19]

1. These articles of agreement entered into this 5th day of August, nineteen hundred fourteen, between Major J. B. Cavanaugh, Corps of Engineers, United States Army, hereinafter designated as the contracting officer, representing the United States of America, of the first part, and Union Lumber Company, Union Mills, in the county of Thurston, State of Washington, hereinafter designated as the contractor, of the second part, witnesseth, that the said parties do hereby covenant and agree, to and with each other, as follows:

2. In conformity with the advertisement and specifications hereunto attached, which form a part of this contract, the said contractor [fol. 20] shall furnish and deliver f. o. b. cars at Union Mills, Washington, two million seven hundred ninety-three thousand one hundred eighty (2,793,180) ft. b. m., more or less, fir lumber. That the contracting officer shall pay the contractor for the material so delivered and accepted as follows:

- For $1\frac{1}{2}$ " x 12" plank, eight and 5/100 dollars (\$8.25) per M ft. b. m.
- For 6" x 12" timber, eight and 25/100 dollars (\$8.25) per M ft. b. m.
- For 8" x 12" timber, eight and 25/100 dollars (\$8.25) per M ft. b. m.
- For 12" x 18" timber, ten and 25/100 dollars (\$10.25) per M ft. b. m.

Article 3. All materials furnished and work done under this contract shall be subject to a rigid inspection by an inspector appointed on the part of the United States, and such as does not conform to the specifications of this contract shall be rejected. The decision of the contracting officer as to quality and quantity shall be final.

Article 4. The contractor shall commence the undertaking covered by this contract as set forth in paragraph — of the attached specifications, and shall prosecute the work, perform the services, and furnish and deliver the materials at a rate sufficient, in the opinion of the contracting officer, to secure completion within the contract time, as set forth in the paragraph of the specifications above cited. Should the contractor fail to make such progress the contracting officer shall have power, after ten days' notice in writing to the contractor, to employ such additional plant or labor, to purchase such materials, and to liquidate such obligations of the contractor, as the contracting officer may deem necessary to put the work in a proper state of advancement, or to insure the proper completion of the undertaking within the time specified; and any ex-

cess cost thereof, over what the work, services, or materials would have cost at the contract rate or rates shall be a charge against any sums due or to become due to the contractor, or such excess cost may be recovered from the contractor and his surety or sureties. This provision, however, shall not be construed to affect the right of the United States to take the work out of the hands of the contractor, as provided in article 4 hereof, and to secure completion of the undertaking by contract or otherwise, in accordance with law. The right is reserved to assume the capacity of the contractor's plant and force on the work, or the past rate of progress and other ascertainable indications of ability and intention to continue or proceed as required, as a measure of probable future progress.

Article 5. If the contractor shall delay or fail to commence with the delivery of the material or the performance of the work as specified herein, or shall, in the judgment of the contracting officer, fail to prosecute faithfully and diligently the work in accordance with the specifications and requirements of this contract, then, in either case, the contracting officer shall have power, with the prior sanction of the Chief of Engineers, to annul this contract by giving notice in writing to that effect to the contractor; and upon the giving of such notice all payments to the contractor under this contract shall cease, and all money or reserved percentage due or to become due thereunder shall be retained by the United States until the final completion and acceptance of the work herein stipulated to be done; and the United States shall have the right to proceed forthwith to secure the delivery of the material, or the performance of the work, by contract or otherwise, in accordance with law, conforming as nearly as practicable, in completing the contract to the requirements and conditions prescribed therein. Any departure from such requirements and conditions, however, shall not release the contractor or the surety or sureties of the contractor from their liability for the damages due to the contractor's default, but they shall not be responsible for any increased cost involved in such departure. Whatever sums may be expended by the United States in completing the said contract in excess of the price herein stipulated to be paid the contractor for completing the same, and also all costs of inspection and superintendence, including all necessary traveling expenses connected therewith, incurred by the United States in excess of those payable by the United States during the period herein allowed for the completion of the contract by the contractor, shall be charged to the contractor, and the United States shall have the right to deduct such excess cost out of or from any money or reserved percentage retained, as aforesaid, or to recover the same, or any part thereof, from the contractor and his surety or sureties.

Article 6. If the contractor shall fail to deliver the material or to prosecute the work covered by this contract so as to complete the same within the time agreed upon, then, in lieu of taking the work out of the hands of the contractor as provided in article 4 of this agreement, the contracting officer, with the prior sanction of the Chief of Engineers, may waive the time limit and permit the con-

tractor to finish the work within a reasonable period, to be determined by the contracting officer. Should the original time limit be thus waived, all expenses for inspection and superintendence after the date fixed for completion, including all necessary traveling expenses connected therewith, and all other actual losses and damages to the United States due to the delay beyond the time originally set for completion, shall be determined by the contracting officer and deducted from any payments due or to become due the contractor: Provided, however, That no charge for inspection and superintendence shall be made for such period after the date fixed for completion of this contract, as, in the judgment of the contracting officer, approved by the Chief of Engineers, shall equal the time which shall have been lost through any cause for which the United States is responsible, either in the beginning or prosecution of the work, or in the performance of extra work ordered by the contracting officer, or on account of unusual freshets, ice, rainfall, or other abnormal force or violence of the elements, or by strikes, epidemics, local or State quarantine restrictions, or other unforeseeable cause of delay arising through no fault of the contractor, and which actually prevented such contractor from delivering the material or commencing or completing the work within the period required by the contract. The findings of the contracting officer, approved by the Chief of Engineers, shall be accepted by the parties hereto as final. But such waiver of the time limit and remission of charges shall in no other manner affect the rights or obligations of the parties under this contract, nor be construed to prevent action under article 4 hereof in case the contractor shall fail, in the judgment of the contracting officer, to make reasonable and satisfactory progress after such waiver of the time limit.

[fol. 22] Article 7. If, at any time during the life of this contract, it be found advantageous or necessary to make any change or modification in the project, and this change or modification should involve a material change in the character or quantity of labor or material to be furnished, or in any other provision of the contract, then such change or modification must be agreed upon in writing by the contracting parties, the agreement setting forth fully the reasons for such change and giving clearly the quantities and prices of both material and labor, or the other provisions thus substituted for those named in the original contract, and before taking effect must be approved by the Secretary of War: Provided, That no payments shall be made in accordance with such supplemental or modified agreement unless the same was signed and approved before the obligation arising from such modification was incurred.

10. Until final inspection and acceptance of, and payment for, all of the material and work herein provided for, no prior inspection, payment, or act is to be construed as a waiver of the right of the contracting officer to reject any defective work or material or to require the fulfillment of any of the terms of the contract.

In witness whereof the parties aforesaid have hereunto placed their signatures the date hereinbefore written.

A. L. Miller as to Union Lumber Co. M. M. Chatten, Pres.

A. A. Coles as to J. B. Cavanaugh, Major, Corps of Engineers. Witness: ————

[Advertisement]

U. S. Engineer Office,
Seattle, Washington, July 14, 1914.

Sealed proposals for furnishing fir timber and plank for use in Chicago, Ill., district, f. o. b. cars at mills, will be received at this office until 10 o'clock a. m. July 23, 1914, and then publicly opened. Information on application to this office or U. S. Engineer office, Chicago, Ill.

J. B. Cavanaugh, Major, Engineers.

* * * * *

Detailed Specifications.

1. Description of the Site and Work

17. The timber and plank herein called for is Oregon or Washington fir and is intended for use in Chicago, Ill., district. Delivery shall consist in loading the foregoing materials on board cars at mills, properly secured for shipment by railroad.

21. Freight affecting bids: All charges for transportation by railroad will be paid directly by the United States. It is intended to take advantage of the reduced freight rates accorded the United States over the land-grant and bond-aided railroads. Bidders will therefore state in the blank space provided on the form of proposal [fol. 23] hereto attached the location of mill or mills and names of railroads reaching same. In making the award the total freight rate will be considered in connection with the unit prices bid.

War Department,
United States Engineer Office,
508 Federal Building,
Chicago, Ill., October 19, 1914.

I hereby certify that between the 19th of August and the 10th of October, 1914, both dates inclusive the Lumber Manufacturers' Agency of Centralia, Wash., contractors, furnished and delivered fir timber f. o. b. cars at the Washington mills, in accordance with the terms of their contract with the U. S. Engineer office of this district dated June 3, 1914, for the improvement of Calumet Harbor, Ill., as follows: 252,024 feet b. m. timber, at \$8.45 per M, \$2,129.60.

This being the last estimate under the contract, no further percentages are retained.

The delivery of the timber on the cars has been actually performed, inspected, and accepted.

This is the second and last estimate submitted under the contract. No part of the above has been included in any estimate heretofore submitted, and, in my opinion, the contractors are entitled to payment under the terms of their contract for the amount specified above.

Respectfully submitted to Lieut. Col. W. V. Judson, Corps of Engineers, U. S. Army. G. A. M. Liljencrantz, Assistant Engineer. GAML-B.

War Department,
United States Engineer Office,
508 Federal Building,
Chicago, Ill., October 19, 1914

I hereby certify that between June 22 and October 10, 1914, both dates inclusive, the Lumber Manufacturer's Agency of Centralia, Wash., contractors, furnished and delivered fir timber f. o. b. cars at their Washington mills, in accordance with the terms of their contract with the U. S. Engineer officer of this district dated June 3, 1914, for the improvement of Calumet Harbor, Ill., and Michigan City Harbor, Ind., in quantities as follows:

672,424 ft. b. m. (Cal. Harbor, Ill.), at \$8.45 per M. . .	\$5,681.98
246,576 ft. b. m. (M. C. Harbor, Ind.), at \$8.45 per M. . .	2,083.57
	<hr/>
	7,765.55
Previously paid (in two payments)	7,201.95
	<hr/>
Balance now due	563.60

The delivery of the timber on the cars at the mills has been actually performed, inspected, and accepted.

This is the final estimate submitted under the contract and contains the aggregate of timber accounted for in the two estimates previously submitted. As all the timber contracted for has been delivered in accordance with the terms of the contract, it is respectfully recommended that payment of the balance due the contractors be made and the contract closed.

Respectfully submitted to Lieut. Col. W. V. Judson, Corps of Engineers, U. S. Army. G. A. M. Liljencrantz, Assistant Engineer. GAML-B.

War Department,
United States Engineer Office,
508 Federal Building,
Chicago, Ill., February 1, 1915.

Address reply to the district engineer officer, Chicago, Ill.
Refer to file No. Chi. H. 259:

I hereby certify that between Dec. 24, 1914, and January 23, 1915, both days inclusive, the Union Lumber Co., of Union Mills, Wash., contractors, furnished and delivered fir timber f. o. b. cars at their Washington mills, in accordance with the terms of their contract with the U. S. engineer officer of the Seattle, Wash., district, dated August 5, 1914, for the improvement of the harbor at Chicago, Ill., as follows:

20,628 feet b. m., 12" x 18" timber, at \$10.25.....	\$211.44
479,187 feet b. m. 12" x 18" timber, \$8.25.....	3,953.29

Amount now due.....	4,164.73
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This being the last estimate submitted under the contract, no percentage is retained.

The delivery of the timber on the cars at the mills has been actually performed, inspected, and accepted.

This is the fifth and last estimate submitted under the contract. No part of the above has been included in any estimate heretofore submitted, and in my opinion the contractors are entitled to payment under the terms of their contract for the amount specified above.

Respectfully submitted to Lieut. Col. W. V. Judson, Corps of Engineers, U. S. Army. G. A. M. Liljencrantz, Assistant Engineer. GAML/B.

Refer to File No. —.

War Department,
United States Engineer Office,
508 Federal Building,
Chicago, Ill., February 1, 1915.

I hereby certify that between the 17th of August, 1914, and 23d of January, 1915, both dates inclusive, the Union Lumber Co., of Union Mills, Wash., contractors, furnished and delivered fir timber f. o. b. cars at their Washington mills, in accordance with the terms of their contract with the U. S. Engineer officer of the Seattle, Wash., [fol. 25] district, dated August 5, 1914, for the improvement of the harbor at Chicago, Ill., as follows:

57,600 feet b. m. timber (12" x 18") @ \$10.25.....	\$590.40
2,779,660 feet b. m. timber (mixed) @ \$8.25.....	22,932.19

Previously paid (in five payments).....	23,522.59
	22,486.61

Balance now due	1,035.98
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The delivery of the timber on the cars has been actually performed, inspected, and accepted.

This is the final estimate submitted under the contract; and, in my opinion, the contractors are entitled to payment, under the terms of their contract, for the amount specified above.

Respectfully submitted to Lieut. Col. W. V. Judson, Corps of Engineers, U. S. Army. G. A. M. Liljencrantz, Assistant Engineer. GAML/B.

APPENDIX C TO FINDINGS

(Telegram)

Vicksburg, Miss., Aug. 28, 1916.

Carolina Portland Cement Co.,

Erato and Clara Streets, New Orleans, La.:

Your proposal accepted. Ship at once two thousand barrels Pittsburgh Laboratory tested cement. Government bills lading mailed testing laboratory, Birmingham, to-day.

Slattery.

Official. Govt. rate paid. Charge 3d Miss. River Dist., Vicksburg, Miss.

Advertisement

Proposals for Cement.—Office of Third Mississippi River District, P. O. Box 404, Vicksburg, Miss., Aug. 15, 1916.—Sealed proposals for furnishing and delivering American Portland cement for use in bank revetment work will be received at this office until noon, Aug. 28, 1916, and then publicly opened. Information on application.

J. R. Slattery, Major, Corps of Engineers.

Specifications

1. It is understood and agreed that the accepted bidder assumes full responsibility for the condition of his material until it is delivered to and accepted by the United States. Material will be considered as delivered to the United States when it is received by the United States either in cars, or barge, or in warehouse.

[fol. 26] 2. Specifications and tests for the cement shall be for an American Portland cement as prescribed in circular No. 33 of the United States Bureau of Standards, a copy of which may be seen at this office. Copies probably may be seen at any U. S. engineer office. Tests will be conducted at the mill either by a recognized testing laboratory or by the United States. Tests may be repeated by taking samples from cement when it is delivered in cars, or barge, or

in warehouse. All expense of testing will be borne by the United States.

3. The cement shall be delivered in sacks. Bidders will state a unit price per barrel, including four sacks; and will further state the deduction that will be allowed, in the final settlement, for each sack returned to the accepted bidder in serviceable condition, f. o. b. cars at the point of delivery of the cement.

4. Rejected Cement.—No rejected cement will be paid for. Should any cement be rejected at the site of the work, the cost to the United States for all handling, towing, and storing of same will be deducted from any money due or which may become due the accepted bidder. Such condemned cement must be promptly removed by the accepted bidder. Failure to do so will constitute authority for the district engineer to cause same to be removed and stored at the accepted bidder's risk and expense.

5. Quantities.—Proposals will be received for 10,000 barrels, subject to an increase or decrease of 20 per cent.

6. Delivery, Place of.—Proposals will be considered for delivery f. o. b. cars at point of manufacture, and f. o. b. cars on U. S. 3d district warehouse switch on the Y. & M. V. R. R. at Vicksburg, Miss.

7. Delivery, Time of.—Delivery shall begin within 30 days after date of receipt of notification of acceptance of proposal, and shall be completed by December 15, 1916. Delivery during this period shall be at such rates as the district engineer may direct. It is expected that delivery of about 2,000 barrels will be required at once, and that the remainder of the cement will be required at the rate of about 2,000 barrels per month, starting Sept. 15, 1916. Should the United States be unable to receive and care for the cement at this rate, or to receive all the cement before December 15, 1916, notice will be given to suspend deliveries or to deliver at a lesser rate, and the time of completion will be correspondingly extended; but no claim against the United States shall be made by the accepted bidder on account of such suspension or decrease in rate of delivery. All orders will be for carload lots. Delivery under any order shall be made within 15 days after receipt of order.

8. Payments.—Payments will be made monthly for all cement received and accepted.

9. Proposals should be sealed, marked "Proposals for Cement," and addressed to the District Engineer Officer, Third Mississippi River District, P. O. Box 404, Vicksburg, Miss.

10. On all questions arising under these specifications the decision of the purchasing district engineer officer shall be final. If the bidder to whom award is made shall fail to comply with any of the terms and requirements of these specifications, which shall form a part of his proposal, it will be sufficient cause for canceling the order

given him without notice. Should the accepted bidder for any reason delay or fail to make delivery of the material ordered from [fol. 27] him within the time and at the place required by the order, or if the order given him has been canceled for failure to comply with the specifications, the purchasing district engineer officer shall have the right to purchase in the open market such material as may be required to make good the deficiency and to deduct the excess cost, if any, of such material over and above what it would have cost at the accepted bidder's price from any money due or to become due the accepted bidder.

11. The United States reserves the right to reject any or all bids and to waive any informalities in the bids received.

Proposal

New Orleans, August 26, 1916.

The District Engineer Officer,
Third Mississippi River District,
P. O. Box 404, Vicksburg, Miss.

SIR: In accordance with the above advertisement and specifications we (or I) propose to furnish and deliver in sacks "Standard" brand American Portland cement at the following unit prices: Place and manner of delivery, f. o. b. cars point of manufacture, Leeds, Ala. Price per barrel, 10,000 barrels, \$1.44½. F. o. b. cars Vicksburg, Miss. (on third district warehouse switch), per barrel, \$1.90.

A deduction of 10 cents will be allowed for each empty sack returned f. o. b. cars at the point of delivery of the cement under paragraph 3 of the specifications.

Carolina Portland Cement Co., By H. Ball Bowers, Manager,
Corner Clara and Erato Streets, New Orleans, La.

Telephoned that 5 cents barrel off for cash in 10 days.

A. M. T.

War Department,
Mississippi River Commission, Third District,
Post Office Building, P. O. Box 404,
Vicksburg, Miss., August 28th, 1916.

To Carolina Portland Cement Co., at New Orleans, La.:

Please deliver the following articles to Geo. W. Cummins, inspector and overseer, f. o. b. cars, Leeds, Alabama, and charge to the account of district engineer officer, Third Mississippi River District, Vicksburg, Miss.

Send bills in duplicate to this office, placing on original the following certificate, viz: "Certified correct and just; payment not received." Where a bill is certified in the name of a company or corporation, the signature of the person writing the company or corporate name, as well as the capacity in which he signs, must appear.

About 10,000 Bbls. Portland cement, in sacks, \$1.44½ Bbl., f. o. b. Leeds, Ala.

All as per specifications, copy attached.

5¢ Bbl. to be deducted if invoice paid within 10 days from date of same.

[fol. 28] Tests are to be made by Pittsburg Testing Laboratory, Birmingham, Ala.

J. R. Slattery, Major, Corps of Engineers, U. S. A., By
Harry C. ———.

Invoice No. 12358

Voucher No. 12. September, 1916

War Department, Third Mississippi River District

[Public Voucher, Purchases and Services Other Than Personal]

Appropriation: Mississippi River (Cottonwood, Miss.)

The United States to Carolina Portland Cement Co., Dr.

Corner Clara & Erato Sts., New Orleans, La., 1920

Date of delivery or serv- ice, 1916	Article or service	Quantity	Unit price	Amount
Sept. 5.	Cement, as per bill attached.	1,940 barrels	\$1.44½	\$2,803.30
	Less charge for 7,760 sacks, @ 10c. each (to be paid subsequently, if sacks are not returned to Leeds, Ala.)			\$776.00
	Less 5c. per bbl. for payment within 10 days	97.00		
				<u>873.00</u>
	Total			1,930.30

Examined by C. M. K.

I certify that the above articles have been received by me in good condition, and in the quality and quantity above specified or the services performed as stated, and they are in accordance with orders therefor; that the prices charged are reasonable, and in accordance with the agreement, or that they were secured in accordance with No. 2 of the method of advertising and under the form of agreement lettered B as shown on the reverse hereof.

J. R. Slattery, Major, Corps of Engineers.

Paid by check No. 12840. September 8, 1916, of Major J. R. Slattery on Treasurer of the United States, in favor of payee named above, for \$1,930.30.

Form No. 330. Public Voucher No. 12. September, 1916.
Third Mississippi River District. Amount, \$1,930.30, in favor of
Carolina Portland Cement Co., accounts of J. R. Slattery, major,
Corps of Engineers, Vicksburg, Miss. First.

[fol. 29]

APPENDIX D TO FINDINGS

War Department,
Office Mississippi River Commission,
First and Second Districts,
Customhouse, Memphis, Tenn., September 13, 1915.

Bucyrus Company,
South Milwaukee, Wisconsin.

Gentlemen:

Referring to proposal of your chief engineer by letter of September 8th in conjunction with your telegram of September 11th, I have to inform you of the acceptance of your proposition for furnishing and installing concrete mat revetment plant for the total sum of \$10,285.00; delivery to be made at South Milwaukee within ten (10) weeks, and erection to be commenced and pushed to earliest completion immediately upon arrival of material at Memphis, all subject to the approval of your details and working drawings, which please forward as fast as the same are prepared.

The total price stated is the sum of \$9,775.00 for material, \$1,175.00 for erection and services of operator, with deduction of \$665.00, covering the omission of spuds (\$500.00) and spud casings (\$165.00), in accordance with your telegram of the 11th instant.

In other words, the proposition contemplates your provision and erection of all the elements indicated in your proposal of the 9th and its accompanying drawings, except spuds and spud casings. As to the latter we have on hand five fifteen-inch sixty-pound spuds and five casings, blue print of the details of which accompanies. These spuds are forty feet in length, and in the interest of present economy will be sufficient for the experimental purposes proposed. Other spuds and casings can be procured for future field work should the experimental operations in contemplation be successful.

If, in your judgment, for any reason these spuds and casings are not deemed suitable, please communicate in regard thereto.

It will be appreciated if you will push this matter to the utmost in the endeavor to gain any possible time.

Regarding the construction to be provided by the United States, I would appreciate such details as are required at your earliest convenience, so that we may be prepared for your installation without delay. Especially in regard to fingers or ways of the mat barge, we would desire details promptly, the said barges being already complete, except for their platforms and ways. Similarly regarding any

strengthening or readjustment required on the mooring barge for the reception of your anchorages and machines.

Regarding the main engine proposed, it is requested that it be provided with suitable connection, such that, by way of an idler, additional shaft may be introduced to the left and parallel to the present installation, on which additional drums may be later introduced for the raising of additional trusses in case a future extension of mat length be determined upon.

Payment for the material and installation in question will be made immediately upon satisfactory installation and at the conclusion of the services of the operator to be provided.

[fol. 30] Regarding shipment, this office will arrange through the Milwaukee engineer office to ship on Government bill of lading immediately upon your request.

Very respectfully, E. M. Markham, Major, Corps of Engineers.

I neglected to say above that the deck of the mooring barge will be extended three feet on each end, as you suggest, thereby giving a total available length of 126 feet.

E. M. M. 1 inc.

A true copy: J. R. —, Chief Clerk.

Bucyrus Company

General Office

South Milwaukee, Wis.

South Milwaukee, Wis., 9/8/15.

Subject: Concrete mat revetment plant.

Major E. M. Markham,

Corps of Engineers,

The Mississippi River Commission, 1st and 2nd Dist.,
Memphis, Tenn.

DEAR SIR:

This is in reply to your letter of August 7th requesting us to submit on or before September 10th complete data concerning plant which we offer for above purpose, together with estimated weights and prices at which we can furnish the material.

As we have been very much pressed for time, and as I understand that the proposals are informal, I take the liberty of combining the various items of information which you request under subheadings in the following proposal letter.

General Description — The proposed arrangement is shown on our drawing No. 43917, and comprises seven trusses, with the necessary raising tackle, winch for operating same, engine, boiler, triggers, and tripping gear for releasing the mat, sheaves and fair leads, wire ropes, spuds guides, and power blocks for hoisting spuds. The layout calls for a mat barge and mooring barge, each 126' long, al-

though you describe your mooring barge as being 120' long. We suggest that the deck of this barge be extended 3' on each end, which extension can readily be supported on brackets and thereby enable the plant to handle a longer mat.

End Trusses.—Two end trusses are provided, each comprising a single girder in vertical plane and serving to manipulate the mat barge. A closed circuit of wire rope is provided from one of the winch drums around each of the end trusses and to an anchorage on the inboard side of the mat barge. This enables operator to move the mat barge to and from the mooring barge always under control.

Intermediate Trusses.—Five intermediate trusses are provided, each properly proportioned to sustain a load of 40,000#, the five trusses being used to sustain a mat weighing 100 tons under water. Each of the intermediate trusses comprises a vertical main girder and two outboard chords and supports fifteen triggers for holding [fol. 31] the concrete mat until its release. This provides a total of seventy-five triggers over the entire mat.

Triggers, Supporting & Releasing Gear.—The mat is supported on a system comprising five drums, located on a single shaft and operated by a hand winch, each drum having two lines reeved upon it. A shaft is supported on the middle truss and parallel to the main girder, the lines extending from their respective drums across all of the apex points on the various intermediate trusses and being anchored off on the outer chords of the intermediate trusses adjacent to the two ends of the barge. At each apex point the line is formed into a bight, carrying a small pulley which supports the trigger. Before launching the mat each trigger is hooked into a properly located loop brought out from the mat reinforcement, and all the lines are pulled up taut by the hand winch and drums. A set of trigger release lines is provided, which are attached to the bolts in the respective triggers and are anchored in the trusses near the apex points.

When the mat is launched it is suspended in the water on the set of guy lines supported by the respective drums, all trigger release lines being slack. To drop the mat it is only necessary to release the brake on the hand winch gear, which pays out all of the guy lines and trips the triggers simultaneously. Each truss is equipped with a mat holding line on its outer end to prevent the mat from moving too far toward the mooring barge. A slip line pin is also provided on each truss to release this holding gear.

Main Winch.—The main winch comprises one 8½" x 8" double cylinder steam reversing engine driving eight drums by suitable gearing. One of these drums operates the moving lines, which pass over the end trusses to the mat barge. The other seven drums raise and lower the seven trusses. The bearings of this winch machinery are mounted on steel sole plates, which in turn will be bolted down on wooden foundations, the material for these foundations to be provided by purchaser.

Barge moving drum 24" in diameter for 1½" plow steel rope.

Truss lifting drums 12" in diameter for ½" rope.

4-part tackle to each truss.

Masts & Spud Guides on Mooring Barge.—The mooring barge is provided with seven masts, one being opposite to each of the seven trusses. The masts are of wood, provided and framed by purchaser. Each mast is supported by a back guy and has tackle sheaves fitted into upper end for raising of trusses. A structural steel stringer also extends the entire length of the barge near the tops of the masts.

The five intermediate masts are doubled with space between the pairs of wooden masts forming five spud guides as indicated. Five spuds are furnished, each being 60' long, and made of 12" 31½# I-beams. Each spud passes through a pair of steel guides bolted to the double masts above described. Each spud carries a trolley located on the flange below the lower guide, and the trolleys are connected by short lines and clevises to the inboard sides of the masts, retaining their hold on the mat as it sinks to the bottom. Each clevis is provided with a trip line, and each trolley is provided with a hand lifting line.

Trigger Details.—Detailed construction of triggers is shown on drawing 43917. This design provides a construction requiring no [fol. 32] additional links to be set in the reinforcement loops, thus saving 75 welded links. It is also very simple and direct in its application, easily tripped, and will lie down flat in any direction without becoming tangled with the ropes. The design is illustrated by wooden model which we are sending you under separate cover under registered mail.

Weights.—The list of segregated weights which you require is as follows:

7 trusses with sheaves and guy-line machinery complete	53,800#
Main winch machinery	10,500
Winch engine	2,900
Truss suspension gear	1,400
5 spuds 60' long	9,500
10 trolleys	500
75 triggers	1,900
Boiler, piping, and fittings	6,000
Spud hoist blocks	900
Wire ropes and shackles	3,000
Total	98,600#

Above are estimated weights and are likely to be somewhat over-run in the finished design.

Prices & Deliveries.—Our price for the above-described material complete, f. o. b. So. Milwaukee, is nine thousand five hundred dollars (\$9,500.00), and delivery at So. Milwaukee can be made in fourteen weeks (14) from date or order. This price is based on the present mill deliveries for structural steel. We can also get this structural steel from stock at an extra cost to us of about \$275.00. For \$275.00 additional, or a total price of nine thousand seven hundred and seventy-five dollars (\$9,775.00), we can make the above delivery at So. Milwaukee in ten weeks (10).

Our price for erection of this material and reeving of ropes complete on the barge, including service of operator for two weeks after completion, is eleven hundred and seventy-five dollars (\$1,175.00). This is predicated on the deck and all woodwork of the scows being complete and ready for the installation of our machinery without alteration or delay, and also upon the connections between the separate units of the various trusses being made with bolts. The vertical girder of each intermediate truss will be riveted up and the outside chords and connecting angles will be bolted on with black bolts and lock washers.

In the preceding I explained that we are counting on extending the deck of one of your scows to increase its length from 120' to 126'. If you do not consider this desirable, it will not be necessary to change the dimensions between centers of intermediate trusses so as to shorten the entire length 6'. This will make the intermediate trusses 23' 6", center to center, in place of 25', center to center.

Hoping that this proposal will meet with your favorable consideration, I am,

Very truly yours, Walter Ferris, Chief Engineer.

A true copy: J. R. Sorothes, Chief Clerk. WF:DE. Encs.

[fol. 33]

[Application]

War Department, Mississippi River Commission, First and Second Districts

Public Voucher—Purchases and Services Other Than Personal

Appropriation: Maintenance and improvement of existing river and harbor works (for improving Mississippi River, first and second districts). Experimental revetment.

The United States to Bucyrus Co., Dr.

Address: South Milwaukee, Wis.

Object symbol	Date of delivery or service	Article or service	Quantity	Unit	Unit price	Amount	United States nota- tions
	1915						
	Dec. 31. ¹	Revetment ma- chine, etc.;					
	1916	bills attached.	.....	.....	.....	\$9,898.81	
	Feb. 28.	.....	.....	.....	.....	2.82	
		Total	.....	.....	.....	9,901.63	

¹ Payment of bill withheld pending completion of tests, etc. Covered by sub-project dated May 6, 1915, par. 3, subheading Experimental Revetment (E. D. 8149/427).

I certify that the above articles have been received by me in good condition and in the quality and quantity above specified, or the services performed as stated, and they are in accordance with orders

therefor; that the prices charged are reasonable and in accordance with the agreement, or that they were secured in accordance with No. 6 of the method of advertising and under the form of agreement lettered C, as shown on the reverse hereof.

All articles marked "P" on attached bills will be accounted for in my next return of engineer property.

E. M. Markham, Major, Corps of Engineers.

Paid by check No. 16157, dated March 25, 1916, of E. M. Markham, major, Corps of Engineers, on Treasurer of the United States, in favor of payee named above, for \$9,901.63.

A true copy.

J. R. Prentiss, Chief Clerk.

[fol. 34]

IN THE COURT OF CLAIMS

VI. JUDGMENT OF THE COURT

At a Court of Claims held in the City of Washington on the First day of May, A. D., 1922, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the defendant, and do order, adjudge and decree that the plaintiff herein is not entitled to recover any sum in this action of and from the United States; and that the petition herein be and the same hereby is dismissed: And it is further ordered, adjudged and decreed that the United States shall have and recover of and from the plaintiff, as aforesaid the sum of One hundred and seventy-five dollars and thirty-one cents (\$175.31), the cost of printing the record in this court, to be collected by Clerk, as provided by law.

By the Court.

IN THE COURT OF CLAIMS

VII. PROCEEDINGS AFTER THE ENTRY OF JUDGMENT

On June 5, 1922, the plaintiff filed a motion to set aside the judgment of May 1, 1922.

On June 12, 1922, the court overruled said motion.

On June 23, 1922, the plaintiff filed a motion for leave to file a motion to amend findings.

On June 26, 1922, the motion for leave to file motion to amend findings was allowed.

On June 27, 1922, the plaintiff filed a motion for amended findings of fact.

On December 4, 1922, the court overruled said motion.

[fol. 35]

IN THE COURT OF CLAIMS

VIII. PLAINTIFF'S APPLICATION FOR APPEAL

Claimant shows to the court that this case involves more than thirty thousand dollars (\$30,000.00); that on May 1, 1922, the court filed findings of fact and rendered a judgment dismissing the petition; that on June 5, 1922, claimant filed a motion to amend said findings of fact and set aside said judgment, and on December 4, 1922, the court made an order over-ruling said motion. Claimant hereby prays an appeal to the United States Supreme Court from said judgment and order.

Benj. Carter, Attorney for Claimant.

Filed January 29, 1923.

IN THE COURT OF CLAIMS

IX. ORDER OF COURT ALLOWING APPEAL

On consideration of the plaintiff's application for appeal in this cause it is ordered by the court that an appeal be and the same is allowed from the final judgment of the court in this cause.

Entered February 5, 1923.

[fol. 36]

COURT OF CLAIMS

[Title omitted]

CLERK'S CERTIFICATE

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law, memorandum filed by the court and appendices A, B, C, D, thereto; of the judgment of the court; of the plaintiff's application for appeal and of the order of the court allowing same.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Eighth day of February, A. D., 1923.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal of Court of Claims.)

Endorsed on cover: File No. 29,461. Court of Claims. Term No. 248. The Illinois Central Railroad Company, appellant, vs. The United States. Filed March 19th, 1923. File No. 29,461.

